

1 JANET M. HEROLD
2 Regional Solicitor
3 DANIELLE L. JABERG (Cal Bar. # 256653)
4 Counsel for ERISA
5 ROSE DARLING (Cal. Bar # 243893)
6 Trial Attorney
7 Office of the Solicitor
UNITED STATES DEPARTMENT OF LABOR
90 7th Street, Suite 3-700
San Francisco, California 94103
Tel.: (415) 625-7744
Fax: (415) 625-7772
Email: darling.rose@dol.gov

8 Attorneys for Plaintiff,
United States Department of Labor

UNITED STATES DISTRICT COURT FOR
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

22 Plaintiff SETH D. HARRIS, Acting Secretary of Labor, United States
23 Department of Labor (“Secretary”) under the authority granted to him by §§
24 502(a)(2) and (5) of the Employee Retirement Income Security Act of 1974
25 (“ERISA”), 29 U.S.C. §§ 1132(a)(2) and (5), has filed a Complaint against
26 TWELEVE SIGNS, INC. (“Twelve Signs” or the “Company”). RICHARD W.
27

1 Housman (“Housman”), individually, and the TWELVE SIGNS, INC.

2 PENSION PLAN (the “Plan”), an employee benefit plan within the meaning of
3 Section 3(3) of ERISA, 29 U.S.C. § 1002(3).¹

4
5 A. The Secretary, Twelve Signs, Housman and the Plan (collectively, the
6 “parties”) admit that the Court has jurisdiction over this action under ERISA §
7 502(e)(1), 29 U.S.C. § 1132(e)(1), and that venue lies in the Central District of
8 California under ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2).

9
10 B. Defendants Twelve Signs, Housman and the Plan (collectively
11 “Defendants”) waive filing of an Answer and further waive entering any
12 affirmative defense, counterclaim, or third-party complaint, or any other defenses
13 that they may have in this case.

14
15 C. The parties agree to the entry of this Consent Judgment and Order.
16 The parties further agree that this Consent Judgment and Order shall fully settle all
17
18 claims of the Secretary asserted in the Complaint filed in this matter.

19
20 D. This Consent Judgment and Order is intended to restore losses to
21 eligible Plan participants and beneficiaries other than Defendant Housman
22 (“Eligible Plan Participants”).

23
24 E. All parties expressly waive Findings of Fact and Conclusions of Law.

25 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that:

26
27

¹ The Plan is named in the Secretary’s Complaint as a party necessary for complete relief under Fed. R. Civ. P. 19(a).

1 1. Defendants Twelve Signs and Housman are jointly and severally
2 liable for **\$363,912.23** losses plus lost-opportunity costs calculated through April
3 30, 2013, to the Plan (“Loss Amount”), and judgment is hereby entered against
4 them in that amount. Lost-opportunity costs are calculated applying an interest
5 rate of five percent (5%) annum.

6
7 2. Pursuant to ERISA § 409, 29 U.S.C. § 1109, Defendants Twelve
8 Signs and Housman are jointly and severally liable and responsible for restoring
9 the Loss Amount to the Plan in payment installments as set forth in this Paragraph,
10 plus simple interest at five percent (5%) per annum (“Interest”) on the declining
11 balance until the Loss Amount is paid in full, as follows:
12
13

14 a. By August 1, 2013, Defendant Housman shall remit \$5,000.00 to the
15 Plan through the Independent Fiduciary, as provided for in Paragraph 3 below.
16

17 b. Thereafter, beginning on August 25, 2013, Defendant Housman shall
18 remit \$1,000.00 per month to the Independent Fiduciary (as defined herein), as
19 provided for in Paragraph 3 below, less any applicable life insurance premiums not
20 to exceed \$400.00 per month, as provided for in Paragraph 6 below. The first
21 installment is due and payable on August 25, 2013, and the remaining installments
22 shall be due and payable on or before the twenty-fifth (25th) business day of each
23 succeeding month thereafter, until the Loss Amount plus Interest has been fully
24 paid.
25
26

1 c. The amounts restored to the Plan pursuant to this Paragraph shall be
2 distributed to Eligible Plan Participants annually on a pro rata basis.

3 d. In the event of default by Defendant Housman in the payment of any
4 of the monthly installments identified in this Paragraph, the total remaining
5 balance of the Loss Amount plus Interest shall then become due and payable
6 within ten (10) business days of the default.

7 3. Jeanne B. Bryant of Receivership Management, Inc., 783 Old Hickory
8 Boulevard, Suite 255, Brentwood, Tennessee 37027; Tel: (615) 370-0051; Fax:
9 (615) 373-4336 shall be, and hereby is, appointed Independent Fiduciary
10 ("Independent Fiduciary") of the Plan who:

11 a. Will be responsible for collecting, marshaling, paying out, and
12 administering Plan assets, calculating the account balances of the Eligible Plan
13 Participants, and taking further action with respect to the Plan as appropriate, and,
14 if necessary, terminating the Plan when all of its assets are distributed to all of the
15 Eligible Plan Participants;

16 b. Pursuant to the procedures outlined in the Employee Benefits Security
17 Administration's Field Assistance Bulletin 2004-02, as may be amended, must
18 exercise reasonable care and diligence to identify and locate each Eligible Plan
19 Participant to the extent the Plan has distributable assets;

20 c. Has all the rights, duties, discretion and responsibilities of a trustee,

1 fiduciary and Plan Administrator under ERISA, including filing annual and final
2 Form 5500s;

3 d. Has the authority to delegate or assign fiduciary duties as appropriate
4 and allowed under the law and may retain assistance as needed including attorneys,
5 accountants, actuaries and other service providers;

6 e. Shall have full access to all data, information and calculations in the
7 Plan's possession and under its control, including information and records
8 maintained by the Plan's custodial trustee or service provider;

9 f. Shall have the authority to give instructions respecting the disposition
10 of assets of the Plan;

11 g. Shall comply with all applicable rules and laws; and

12 h. Shall be entitled to reasonable compensation, fees and expenses, paid
13 by the Plan. Following the entry of this Consent Judgment and Order by the Court,
14 the Independent Fiduciary shall be required to present to the Court and the
15 Secretary an itemized report of fees and expenses on a quarterly basis ("Fee
16 Report"), including a copy to Defendant Housman at Twelve Signs, Inc., 520
17 Broadway, Suite 350, PMB 153, Santa Monica, California 90401. The Fee Report
18 shall include the hourly rates of pay, dates and hours of work, a description of
19 work performed, and an itemized statement of expenses. It will be deemed that
20 there is no objection to the Fee Report, unless the Secretary specifically objects to
21

22
23
24
25
26
27

1 the fees and expenses charged within fifteen (15) business days.

2 4. Defendants shall cooperate fully with the Independent Fiduciary
3 herein appointed by the Court in providing documents or information they may
4 have relevant to the Plan's administration and management.

5 5. Defendant Housman hereby forfeits and waives any interest he may
6 have in any amounts restored to the Plan as a result of the Secretary's Complaint
7 and this Consent Judgment and Order, including the Loss Amount plus Interest.

8 6. The Independent Fiduciary shall, in the exercise of its discretion,
9 review the transactions respecting the Plan and issue Defendant Housman an I.R.S.
10 Form 1099-R on an annual basis for an amount equal to Defendant Housman's
11 Plan share percentage multiplied by the total amount distributed to Eligible Plan
12 Participants in the Plan year. Example: If Defendant Housman's Plan share
13 percentage is 32.5% and \$12,000.00 was distributed to Eligible Plan Participants in
14 a Plan year, then the Independent Fiduciary shall issue Defendant Housman a form
15 1099-R for \$3,900.00 at the end of that Plan year.

16 7. Within seven (7) business days of execution of any Form 1099-R, the
17 Independent Fiduciary shall provide a copy of such form to the Secretary at the
18 address set forth below in Paragraph 19.

19 8. Within ninety (90) calendar days of execution of this Consent
20 Judgment and Order, Defendant Housman shall use his best efforts to obtain a life
21
22
23
24
25
26
27

1 insurance policy from an insurance company that is licensed to sell insurance in the
2 State of California and that is rated at least "A-" by AM Best (or equivalent) and
3 that costs no more than the amount of \$400 per month. Such policy, if obtained,
4 shall (i) be for an amount not less than \$150,000.00; (ii) identify Housman as the
5 named insured; and (ii) contain an endorsement naming the Plan as the sole
6 beneficiary of the policy. In the event that payment on the policy is ever made to
7 the Plan, to the extent that the remaining Loss Amount at that time plus Interest is
8 less than the amount paid to the Plan under the described life insurance policy, the
9 Plan shall, within thirty (30) calendar days after receipt of the policy proceeds,
10 refund the difference to Defendant Housman's estate.
11

12 9. Defendant Housman shall maintain and renew the life insurance
13 policy identified in Paragraph 8 above, if obtained, with the Plan as the beneficiary
14 until such time as the Loss Amount plus Interest has been paid in full, after which
15 time Defendant Housman may, in his sole discretion name a different beneficiary
16 or beneficiaries of his own choosing or choose to let the policy lapse. Defendant
17 Housman shall provide the Independent Fiduciary with a copy of the life insurance
18 policy and subsequent renewals within thirty (30) calendar days of
19 obtaining/renewing same. The Independent Fiduciary shall review the policy on
20 an annual basis to ensure that it current and the Plan is the named sole beneficiary.
21

22 10. Defendant Housman shall provide the Independent Fiduciary with a
23

1 copy of the life insurance policy identified in Paragraph 8 above, if obtained, and
2 subsequent renewals within thirty (30) calendar days of obtaining/renewing same.
3 If Housman obtains a life insurance policy pursuant to Paragraph 8, he remains
4 obligated for the same amount of the monthly payments called for in Paragraph 2
5 until the Loss Amount plus Interest has been fully paid. If Housman is unable to
6 obtain a term life insurance policy with a premium cost of \$400 per month or less
7 for any of the options outlined in Paragraph 8 above, then within one-hundred-
8 twenty (120) calendar days of executing the Consent Judgment and Order,
9 Defendant Housman shall provide documentary proof to the Secretary at the
10 address set forth below in Paragraph 19 that he has used his best efforts and has
11 been unable to obtain such a life insurance policy.

12 11. Defendant Housman agrees that, in the event that he files for
13 bankruptcy protection under any chapter of the United States Bankruptcy Code,
14 within thirty (30) calendar days of filing a petition in any U.S. Bankruptcy Court,
15 he will (i) notify the Secretary of his bankruptcy; and (ii) execute a stipulation with
16 the Secretary and consent to the entry of an Order that the identified Loss Amount
17 plus Interest calculated through the date on which he files for bankruptcy is a
18 nondischargeable debt pursuant to section 523(a)(4) of the U.S. Bankruptcy Code,
19 11 U.S.C. § 523(a)(4) (“Stipulation”). The Stipulation and entry of a subsequent
20 Order shall further provide that lost-opportunity costs will continue to accrue at the
21
22
23
24
25
26
27

1 rate of five percent (5%) annum from the date the relevant nondischargeability
2 Order is issued until such time as the Loss Amount plus Interest is paid to the Plan
3 in full.
4

5 12. Upon appointment of the Independent Fiduciary, Defendant Twelve
6 Signs is removed as Plan Administrator to the Plan.
7

8 13. Upon appointment of the Independent Fiduciary, Defendant Housman
9 is removed as fiduciary of and Trustee to the Plan.
10

11 14. Defendant Housman is hereby permanently enjoined and restrained
12 from future service as a fiduciary of, or service provider to, any ERISA-covered
13 employee benefit plan.
14

15 15. Defendants Twelve Signs and Housman are permanently enjoined and
16 restrained from violating the provisions of Title I of ERISA, 29 U.S.C. §§ 1001-
17 1191c.
18

19 16. Within ten (10) business days of the Court's entry of this Consent
20 Judgment and Order, Defendant Housman shall provide a copy of this Consent
21 Judgment and Order to the Independent Fiduciary.
22

23 17. Within ten (10) business days of the Court's entry of this Consent
24 Judgment and Order, Defendant Housman shall provide to the Independent
25 Fiduciary copies of all checks in his possession that were issued from Plan assets,
26
27

1 as well as all other documents related to the Plan in Defendant Housman's
2 possession.

3 18. If at any time the Secretary determines that Defendant Housman
4 transferred assets for the purpose of avoiding disclosure or making full repayment
5 to the Plan as set forth in this Consent Judgment and Order, or materially
6 misrepresented his financial condition in his Declaration of Financial Status
7 submitted to the Secretary on May 30, 2012 or any other financial documents
8 submitted to the Secretary at any time in the future, the Secretary, by appropriate
9 motion, may reopen his case against Defendants and seek payment of all or part of
10 the remaining balance of the Loss Amount plus Interest.

11 19. Defendant Housman agrees that on or before April thirtieth (30th) of
12 every calendar year following the execution of this Consent Judgment and Order,
13 he will complete under penalty of perjury and submit to the Secretary a fully-
14 executed Declaration of Financial Status with the required supporting
15 documentation (a blank form copy of which declaration is attached hereto as
16 Exhibit A). At the same time, Defendant Housman shall provide copies of the
17 cancelled checks representing the monthly installment payments made pursuant to
18 Paragraph 2 above for the prior calendar year, or other proof in writing that such
19 payments were made. The submission shall be made by reliable overnight delivery
20 AND fax or email to:

1 Ty Fukumoto
2 Deputy Regional Director
3 United States Department of Labor
4 Employee Benefits Security Administration
5 1055 E. Colorado Blvd.; Suite 200
6 Pasadena, California 91106
7 Fax: 626-229-1098
8 Email: fukumoto.ty@dol.gov

9
10 Further, the Secretary reserves the right to request that Defendant Housman submit
11 a Declaration of Financial Status at any other time, in addition to the required
12 annual reporting on or before April thirtieth (30th).

13
14 20. If the documents submitted to the Secretary, as required by Paragraph
15 19 above, demonstrate that Defendant Housman's gross individual household
16 income and other earnings, which shall include all property of Housman's
17 household, including but not limited to any property or assets acquired through
18 income, investments, dividends, royalties, sales of real, personal or intellectual
19 property, gifts, inheritance, life insurance, lottery winnings or other gambling
20 income, exceed \$60,000.00 (sixty thousand dollars) in any twelve-month period,
21 he will pay the Independent Fiduciary within fifteen (15) business days of receipt
22 of a notice from the Secretary, a sum equal to twenty percent (20%) of his gross
23 household income above \$60,000 (sixty thousand dollars), or the remaining
24 balance of the Loss Amount plus Interest, whichever is less.

25
26 21. This Consent Judgment and Order does not in any manner affect the
27 right of the United States Department of Labor to assess a civil penalty of twenty

1 percent (20%) pursuant to ERISA § 502(l), 29 U.S.C. § 1132(l) on all payments of
2 the Loss Amount plus Interest. Defendants waive the notice of assessment and
3 service requirement of 29 C.F.R. § 2570.83. Upon assessment, payment of the
4 penalty shall be made immediately unless Defendants file a petition for waiver or
5 reduction of the penalty as provided for in 29 C.F.R. §§ 2570.83–2570.87 and the
6 Secretary agrees to waive or reduce the penalty. In the event that the Secretary
7 does not agree to waive or reduce the penalty, Defendants shall remit the penalty
8 amount to the Secretary within sixty (60) calendar days of receipt of the
9 Secretary’s decision denying Defendants’ petition. Defendants may not challenge
10 the applicable recovery amount, the validity of the violations alleged, or their
11 liability for the violations.

12 22. Defendants Twelve Signs and Housman expressly waive any and all
13 claims of any nature which they have or may have against the Secretary, the
14 Department of Labor, or any of its officers, agents, attorneys, employees or
15 representatives, arising out of or in connection with the allegations contained in the
16 Complaint on file in this action, any other proceedings or investigation incident
17 thereto or based on the Equal Access to Justice Act, as amended.

18 23. The Secretary and all Defendants shall each bear their own costs,
19 expenses, and attorneys’ fees incurred to date in connection with any stage of this
20 proceeding, including but not limited to attorneys’ fees which may be available
21
22
23
24
25
26
27

1 under the Equal Access to Justice Act, as amended.

2 24. Nothing in this Consent Judgment and Order is binding on any
3 governmental agency other than the United States Department of Labor, Employee
4 Benefits Security Administration.

5 25. This Court retains jurisdiction of this action for purposes of enforcing
6 compliance with the terms of this Consent Judgment and Order.

7 26. By signing their names to this Consent Judgment and Order, the
8 parties represent that they are informed and understand the effect and purpose of
9 this Consent Judgment and Order.

10 27. This Consent Judgment and Order may be executed in counterparts,
11 each of which shall be deemed to be an original, but all of which, taken together,
12 shall constitute one and the same instrument.

13
14
15
16
17
18 The Court directs the entry of this Consent Judgment and Order as a final
19 order.

20 IT IS SO ORDERED.

21
22 10/21/13

23 Dated: _____

Dale S. Fischer
24 _____
25 UNITED STATES DISTRICT JUDGE
26
27 //

1 Dated: July 31, 2013

2 M. PATRICIA SMITH
3 Solicitor of Labor

4 JANET M. HEROLD
5 Regional Solicitor

6 DANIELLE L. JABERG
7 Counsel for ERISA

8 By: /s/ Rose Darling
9 ROSE DARLING (Cal. Bar # 243893)
10 Trial Attorney

11 Attorneys for the Secretary
12 United States Department of Labor

13 Defendants consent to the entry of this Consent Judgment and Order.

14
15 Dated: _____

16 RICHARD W. HOUSMAN, in his individual
17 capacity and as President of Twelve Signs, Inc.
18 and Trustee of Twelve Signs, Inc. Pension Plan